



09 AUG 2010

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

The Dow Chemical Company  
P.O. BOX 1967  
Midland MI 48641

In re Application of:	:	
KARJALA, Teresa, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/529,530	:	(37 CFR 1.78(a)(6))
PCT No: PCT/US2003/030910	:	
International Filing Date: 01 October 2003	:	
Priority Date Claimed: 02 October 2002	:	
Attorney Docket No.: 62144B	:	
For: LIQUID AND GEL-LIKE LOW	:	
MOLECULAR WEIGHT	:	
ETHYLENE POLYMERS	:	

This is a decision on the "Petition To Accept An Unintentionally Delayed Benefit Claim Under 35 U.S.C. 119(E), 120, 121, And 365(C)" filed 18 June 2010. The petition seeks acceptance of unintentionally delayed claims under 35 U.S.C. 119(e) for the benefit of two prior-filed provisional applications, as set forth in the concurrently filed amendment and application data sheet (ADS).

The petition is **DISMISSED AS MOOT**.

The materials filed on 29 March 2005 to initiate the present national stage application did not include an ADS containing a reference to prior-filed provisional applications 60/415,595 and 60/424,880, nor did the first sentence of the specification following the title contain such a reference. However, the executed declaration filed with the initial national stage materials on 29 March 2005 contained a priority reference directed to these provisional applications.

Where a claim for priority under 37 CFR 1.78(a)(6) is not included in the first sentence of the specification or in an ADS, but it does appear either in the oath or declaration or a transmittal letter filed with the application **and** the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(6).

In the instant case, the Office noted the claim for priority of the prior-filed applications in the transmittal letter filed with the application, as shown by their inclusion on the initial filing receipt mailed herein on 27 October 2005.

In view of the above, the \$1,410 petition fee applicable to a petition under 37 CFR 1.78(a)(6) is unnecessary.

Applicants should note that, even though the Office has recognized the benefit claim by including it on applicant's filing receipt and has determined here that a petition under 37 CFR 1.78(a)(6) is not required, as set forth in MPEP section 201.11(III)(D): "the benefit claim is not a proper benefit claim under 35 U.S.C. 119(e) or 35 U.S.C. 120 and 37 CFR 1.78 unless the reference is included in an ADS or in the first sentence of the specification and all other requirements are met." The present decision only indicates that a petition under 37 CFR 1.78(a)(6) is not required for entry of the benefit claims to the provisional applications. It is for the Examiner to determine whether the supplemental ADS and amendment including such benefit claims (filed by applicant concurrently with the present petition) are appropriately entered herein.

Applicant is advised that a supplemental ADS must bear a proper signature. See 37 CFR 1.33(b). The present supplemental ADS is not properly signed. Submission of a supplemental ADS with another signed document does not satisfy the signature requirement. Applicant may wish to refer to the most recent version of Form PTO/SB/14, which can be obtained at [http://www.uspto.gov/forms/sb0014\\_fill.pdf](http://www.uspto.gov/forms/sb0014_fill.pdf) and which contains an appropriate signature box.

Any questions concerning this decision on petition may be directed to Richard M. Ross at (571) 272-3296. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.



Bryan Lin  
Legal Examiner  
Office of PCT Legal Administration